

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

EMEM UFOT UDOH,

Petitioner, Civil No. 21-1588 (JRT/JFD)

v.

STATE OF MINNESOTA,

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Respondent.

Emem Ufot Udoh, OID #245042, MCF-Faribault 1101 Linden Lane Faribault, MN 55021, *pro se* petitioner.

Jonathan P Schmidt, Assistant County Attorney, Hennepin County Government Center, 300 South 6th Street, Suite C-2000, Minneapolis, MN 55487, **Edwin William Stockmeyer, III**, Minnesota Attorney General's Office, Suite 1800, 445 Minnesota Street, St. Paul, MN 55101, and **Matthew Frank**, Minnesota Attorney General's Office, Suite 1800, 445 Minnesota Street, St. Paul, MN 55101, for respondent.

Petitioner Emem Ufot Udooh has filed objections to a Report and Recommendation ("R&R") issued by United States Magistrate Judge John F. Docherty on August 16, 2021, recommending that the petition for a writ of habeas corpus be dismissed without prejudice. Because Petitioner has once again failed to obtain authorization from the Eighth Circuit, the Court lacks jurisdiction to consider the petition and will thus overrule the objections and adopt the Report and Recommendation.

BACKGROUND

Petitioner Emem Ufot Udooh was convicted in state court on one count of criminal sexual conduct and sentenced to twelve years of imprisonment. *State v. Udooh*, No. A14-2181, 2016 WL 687328 (Minn. Ct App. Feb. 22, 2016). He filed a petition for a writ of habeas corpus that was denied on the merits in 2017, then a successive petition that was denied because he lacked authorization from the Eighth Circuit. *Udooh v. Dooley*, No. 16-cv-4174 (PAM/HB), 2017 WL 2881126 (D. Minn. July 6, 2017); *Udooh v. Knutson*, No. 19-cv-1311 (MJD/HB), 2019 WL 5150141 (D. Minn. Aug. 29, 2019). Yet again, Udooh has filed a petition for a writ of habeas corpus.

The Magistrate Judge found that the Court once again lacked jurisdiction over Udooh's petition because Udooh failed to obtain authorization from the Eighth Circuit. Udooh objects to the R&R but has not raised any specific objections to the Magistrate Judge's proposed findings or recommendations. Instead, Udooh merely resubmits his original petition, along with a cover page restating previously submitted arguments.

DISCUSSION

A district court reviews *de novo* the portions of the R&R to which a petitioner specifically objects. 28 U.S.C. § 636(b)(1) and D. Minn. Local Rule 72.2(b). However, unspecific objections to an R&R which merely repeat arguments previously considered by a magistrate judge are not entitled to *de novo* review, and instead are reviewed for clear error. See, e.g., *Wilson v. Fikes*, No. 21-367, 2021 WL 2582199, at *1 (D. Minn. June 23,

2021). Applying this standard, the Court finds that the R&R is not clearly erroneous. The Magistrate Judge correctly found that without authorization from the Eighth Circuit, Udoh was not permitted to file this successive petition, and therefore the Court lacked jurisdiction to consider the petition's merits. *See* 28 U.S.C. § 2244(b)(3); (Docket No. 12). Accordingly, the Court will overrule Udoh's objection, adopt the R&R, and dismiss this action without prejudice. This decision additionally renders moot Udoh's pending application to proceed *in forma pauperis* [Docket No. 2] and motion for the Court to accept the petition for habeas corpus [Docket No. 3]. Finally, this order also resolves Udoh's motion for injunctive relief requesting the Court to order the Minnesota Court of Appeals to reopen his appeal in the state matter A19-1129 [Docket No. 13]. In that motion, Udoh requests the same relief awarded by the Sixth Circuit in *Dorn v. Lafler* – a partial grant of a writ of habeas corpus. 601 F.3d 439, 445 (6th Cir. 2010). As stated in the Report and Recommendation and adopted here, the Court does not have jurisdiction to grant such relief unless Udoh obtains authorization from the Eighth Circuit. Therefore, the application to proceed *in forma pauperis* and both motions will be denied. Since this action is dismissed without prejudice, Udoh may petition for a writ of habeas corpus in the future if he receives authorization from the Eighth Circuit. Finally, the Court adopts the recommendation that no certificate of appealability be issued.

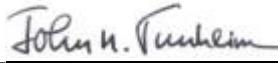
ORDER

Based on the foregoing, and all the files, records, and proceedings herein, the Court **OVERRULES** Petitioner's objection [Docket No. 21] and **ADOPTS** the Report and Recommendation of the Magistrate Judge [Docket No. 12]. **IT IS HEREBY ORDERED** that:

1. This matter is **DISMISSED WITHOUT PREJUDICE**.
2. The application to proceed *in forma pauperis* of petitioner Emem Ufot Udo [Docket No. 2] is **DENIED AS MOOT**.
3. Udo's Motion to Accept [Docket No. 3] is **DENIED AS MOOT**.
4. Udon's Motion for Injunctive Relief to Reopen A19-1129 [Docket No. 13] is **DENIED AS MOOT**.
5. No certificate of appealability is issued.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: November 8, 2021
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
Chief Judge
United States District Court